IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 273 OF 2005

Mr. Raymond B. Mascarenhas
and another. ... Petitioners

versus

State of Goa through
Chief Secretary and others. ... Respondents

Mr. J. Godinho, Advocate for the Petitioners.

Mr. S. R. Rivonkar, Government Advocate for Respondent Nos.1 to 4.

CORAM : R. M. LODHA &
N. A. BRITTO, JJ.

DATE : 29TH AUGUST,2005.

P.C.:-

Heard Mr. J. Godinho, the learned Counsel for the Petitioners and Mr. S. R. Rivonkar, the learned Government Advocate for the Respondent Nos.1 to 4.

The grievance of the Petitioners in this Writ Petition pertains to non implementation of the Order dated 25-8-2000 for removal of illegal construction allegedly raised by the Respondents No.6 to 9. The reply affidavit has been filed by the Deputy Director of Panchayat, South Goa, District, Government of Goa (Respondent No.3). In paragraphs 6 to 11 in the reply affidavit, the following statements have been made:-

> "6. I say that by letter dated 6/11/2001, the Petitioner no.1 informed my office, that the Village Panchayat of Cana-Benaulim has failed to take any action as per the order dated 25/8/2000. I say that on receiving the said complaint my Predecessor-in-office, by Memorandum dated 1/7/2002, directed the Block Development Officer, Salcete to take immediate action in the matter. I say thereafter by another Memorandum dated 1/4/2003, my Predecessor-in-office again directed the Block Development Officer, Salcete, to implement the order passed on 25/8/2000 and take immediate action pursuant to it. I say that since no action was taken, by letter dated 24/6/2003, the site inspection was carried out by my Predecessor-in-office, on 30/6/2003. Accordingly, by

letter dated 7/7/2003, the Sarpanch of Village Panchayat, Cana-Benaulim was requested to construct drainage at the western(back) side of the Apartments, in the said property, for maintaining proper drainage system. I say by letter dated 12/8/2003, the Sarpanch of the Village Panchayat, informed that there is no space to construct drainage at the western(back) side of the said property. I say that in view of the said letter, I by letter dated 27/8/2003, informed the Sarpanch of the Panchayat, to take action of demolition of the constructions and encroachment in the said property. I say accordingly, the Village Panchayat, by letter dated 22/10/2003, informed my office, that the Panchayat has issued show-cause notices to the concerned parties for taking action. The Panchayat by further letter dated 19/1/2004, informed my office, that the Panchayat has issued demolition notice to the concerned parties and decided to demolish the said construction through the Block Development Officer, Salcete. I say that in the meanwhile, due to ensuing elections, no eviction/demolition could be carried out.

7. I say that thereafter on 23/7/2004, the BLock Development Officer, Salcete, carried out the demolition and forwarded the Compliance report, along with the undertaking of the Respondent No.6 to remove the illegal encroachment.

8. I say that on 27/7/2004, the Petitioner no.1, again informed my office, that the order dated 25/8/2000, passed by my Predecessor-in-office, was not complied with fully. I immediately on 30/7/2004, issued Memorandum to Block Development Officer, Salcete, to implement the said order in totality. I say that pursuant to which the Block Development Officer carried out the demolition and by letter dated 1/10/2004, informed my office that fresh demolition was carried out on 26/8/2004,and forwarded the panchanama of demolition. Accordingly, by letter dated 8/10/2004, I, informed the Petitioner No.1 that the demolition was carried out on 26/8/2004. However, since there was again complaint from the Petitioner no.1, that drain was not still cleared, the Block Development Officer, directed the Secretary, Village Panchayat to clear the drain. I say that the Secretary of the Village Panchayat by letter

dated 8/11/2004, informed my office, along with Panchanama-Report, dated 3/11/2004, that demolition has been carried out fully and that order has been fully implemented.

9. I say that the petitioner no.1 by letter dated 15/12/2004, again, informed my office that the order is not fully implemented as regards the drain as it was not cleared properly for free flow of water, in the said property. Accordingly, I issued Memorandum dated 31/12/2004, to Block Development Officer, Salcete, to conduct the detailed inquiry and to furnish the Panchanama, check list and sketch of alleged illegal construction carried out by the Respondent.

10. I say pursuant to the said memorandum the Block Development Officer, Salcete, carried out the site inspection on 14/7/2005 and submitted the report by letter dated 26/7/2005, along with panchanama, and check list and the sketch of the illegal construction.

11. I say that since the illegalities pointed by the Block Development Officer were

> concerning new constructions, I by letter dated 29/7/2005, requested the Sarpanch to take appropriate action under the law, concerning the said new illegal constructions pointed out by the Block Development Officer, by placing the matter before the Village Panchayat Body, under the Goa Panchayat Raj Act, 1994, being the competent authority to take actions against the alleged illegal constructions. I say that by the said letter called upon the Sarpanch to place the compliance report within 15 days. However since no Compliance report was filed; I again on 23/7/2005 called upon the Secretary of the said Village Panchayat to submit the action taken on the Report within 10 days. I say that my office is awaiting the said Compliance Report. I say that accordingly matter is before Village Panchayat for further action according to law".

In view thereof, we are satisfied that the Order dated 25-8-2000 has been implemented and no Order needs to be passed by this Court. As regards fresh illegal constructions, the Petitioners may take up the matter with the concerned Village Panchayat for removal of the illegal constructions. The

concerned Panchayat shall take action for removal of the illegal constructions expeditiously after giving notice to the Respondents No.6 to 9.

Writ Petition is disposed of accordingly.

R. M. LODHA, J.

N. A. BRITTO, J.

RD.